IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1792 of 1982
with
CIVIL REVISION APPLICATION NO 1793 of 1982
with
CIVIL REVISION APPLICATION NO 1794 of 1982
with
CIVIL REVISION APPLICTION No 1795 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No

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2. To be referred to the Reporter or not? No

3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No

NAVNITBHAI CHUNIBHAI PATEL

Versus

HARGOVANDAS BECHARBHAI PATEL
(in CRA 1792 OF 1982)

NAVNITBHAI CHUNIBHAI PATEL
versus
OWNER OF HONEST DUGHDHALAYA
(in CRA 1793 of 1982)

NAVNITBHAI CHUNIBHAI PATEL
versus
GOPALBHAI DUNGARBHAI PATEL
(in CRA 1794 of 1982)

NAVNITBHAI CHUNIBHAI PATEL
versus

KAUSHIKCHANDRA JAGANNATH DALWADI
(in CRA 1795 of 1982)

Appearance:
MR AC SEN with Mr.Mrugen Purohit for MR PRASHANT G DESAI
for Petitioner
MR RA MISHRA for Respondent No. 1
(in all the matters)

CORAM : MR.JUSTICE D.C.SRIVASTAVA
Date of decision: 20/07/98

ORAL COMMON JUDGEMENT

1. These four Civil Revisions arising out of common Judgmentsof the lower Appellate Court involving common question of facts are proposed to be disposed of by a common judgment.

2. Four H.R.P. Suits Nos. 3994, 3995, 3996 and 3998 all of 1974 were filed by the landlord revisionist against four tenants for their eviction, recovery of arrears of rent and mesne aprofits. Eviction was sought on the ground that the tenants were in arrears of rent and they were not ready and willing to pay the rent and that the rent was not paid within a month of service of notice of demand. Eviction was also sought on the ground that the tenants were causing nuisance and annoyance to the neighbouring occupiers. Validity of notice was also challenged. Dispute regarding the standard rent was raised by the four tenants.

3. The trial Court fixed the standard rent of the four premises in the above four suits at Rs.89/-, Rs.87/-, Rs.106/- and Rs.120/- p.m. respectively. The trial Court found that the suit was covered by Section 12(3)(b) of the Bombay Rent Act and since the tenants had deposited the arrears and were ready and willing to pay the same they were entitled to the benefit of Section 12(3)(b) of the Act. Accordingly the decree for eviction on ground of non-payment of rent was refused. Decree for eviction on ground of nuisance was also refused inasmuch as this ground was not proved and there was no evidence from the side of the revisionist. While fixing the standard rent the trial Court observed that the tenants are liable to pay Municipal tax, Government tax and Education Cess. Decree for arrears of rent was also passed.

4. Feeling aggrieved the landlord preferred four

appeals which were partly allowed. The Decree for eviction was refused by the Appellate Court also. The Decree of the trial Court fixing standard rent was modified and the standard rent in Appeal Nos.33, 34, 35 and 36 all of 1979 was thus fixed at Rs.156/-, 159/-, Rs.93/and Rs.97.50 ps. per month respectively. Still feeling aggrieved the landlord has preferred this revision in which only the order of the Appellate Court fixing the standard rent has been assailed.

5. Learned Counsel for the parties were heard at length.

6. The first contention of the learned Counsel for the revisionist has been that the burden of proof of standard rent always lies on the tenant and it never shifts on the landlord but the appellate Court has committed an error in observing that adverse inference canbe drawn against the landlord, for showing less cost of construction in his return of wealth tax. Two cases reported in AIR 1983 Cal. 671 and AIR 1953 Cal. 714 were relied upon so also the provisions contained in Section 101 of the Evidence Act.

7. The short reply to this contention is that the question of burden of proof looses its significance after the parties have adduced evidence. Whatever evidence was adduced by the party has to be assessed by the Court and the finding has to be arrived at. In the instant case, in all the four suits experts were examined from the two sides to prove the cost of construction and the cost of land on the date of letting. There was variance in their statement. The trial Court did not place implicit reliance on the expert examined by the landlord for the cogent reasons given in its Judgment. The lower Appellate Court has also not placed blanket reliance upon the evidence of the expert. Other factors were also taken into consideration. Consequently it is difficult to accept the contention that here is the case where findings were recorded without any evidence. The evidence was already there, circumstances were also taken into consideration and as such it cannot be said that the Judgments of the two Courts below stand vitiated for placing wrong burden of proof on the landlord. No where in the Judgments the two Courts below had placed burden of proof upon the landlord.

8. The next contention of the learned Counsel for the revisionist has been that five material points were not considered by the two courts below. The first was that the building is situated on the main road, hence its

market value and also market value of the land should have been assessed at higher rate. Another point which according to Mr.Sen, learned Counsel for the revisionist was ignored by the two courts below was that the building is situated in commercial area and this factor was also not taken into consideration. The third contention has been that the trend of rise in value of land and building material was also not taken into consideration. The fourth point according to the learned Counsel for the revisionist has been that different areas will have different market value, viz. front area will fetch more market value than the area falling in the back portion and the last contention has been that in any case agreed rent should have been the standard rent.

9. Learned Counsel for the respondents rightly argued that these points were not taken by the landlord in the two Courts below and as such these points cannot be permitted to be taken for the first time in this revision inasmuch as these points hardly involve any question of law and on factual aspects these point should not be permitted to be raised in this revision. The contention is sound and can be accepted. All these points were not raised in the Courts below.

10. However, incidentally it can be said that these points do not alter the judgment of the Appellate Court. The trial Court after taking into consideration the market value of the land, the cost of construction, floor area of the shops in question 6% return of land, 8% return of cost of construction, out-going as per reports of Engineers, calculated standard rent at Rs.89/-, Rs.87/-, Rs.106/- and Rs.127/- for the four shops in suit Nos.3994, 3995, 3996 and 3998all of 1974. The trial CouBrt further found that the standard rent cannot exceed the agreed rent and since the agreed rent of the shop in Suit No.3998 was Rs.120/-, the standard rent cannot exceed this amount. These were modified by the Appellate Court to the benefit of the landlord inasmuch as the standard rent was enhanced to Rs.156/-, Rs.115/-,Rs.93/and Rs.97.50 ps. p.m. besides taxes and education cess.

11. As to what should be the cost of construction and cost of land is not a question of law. The findings of the lower Appellate Court cannot be interfered on this factual question simply because the finding is not concurrent. Moreover the finding is for the benefit of the landlord revisionist and not to his detriment. Relevant criteria laid down in Rajnikant Sheth V/s. Rameshchandra Kantilal Bhatt & ors. reported in 1981 GLH

444 was taken into consideration. In this very case it was laid down while interpreting the words "just and reasonable and excessive" that the Court can interfere and fix the standard rent at such amount as it deems just and reasonable if rent charged is in the opinion of the Court excessive. The term "excessive" means exceeding usual or proper limit or degree, extra-vagant, extreme, inordinate, exorbitant or unreasonable. On the basis of language of Section 11 of the Bombay Rent Act it was held that the court has jurisdiction to interfere with the contractual rent if and only it considers the same to be excessive i.e. unreasonably high. These observations therefore leave no room for the contention that in any case agreed rent should have been standard rent no matter agreed rent is excessive or exorbitant.

12. Having examined the Judgment of the Lower Appellate Court I do not find any good and cogent ground for interfering with the calculations made by it and the result arrived at by it in fixing the standard rent of the four shops.

13. In the result no merit is found in these revisions which are hereby dismissed. Parties to bear their own costs.

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